IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7791 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BJ SOLANKI

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 7791 of 1988

MS SONALI R DESAI for Petitioner

MR MR MENGDE, A.G.P. for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 11/10/2002

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to set aside and quash order dated

November 5, 1988, passed by the Collector, Bharuch, by which his appointment as a peon is cancelled and he is dismissed from service.

2. The Collector, Bharuch, vide letter dated July 28, 1982, had called upon the District Employment Exchange, Bharuch, to forward a list of candidates, as it was purposed to make appointments on the post of peons. In response to the said letter, the Employment Officer by his letter dated August 11, 1982, had sent a list of candidates for the said purpose. In the said list, the name of the petitioner was shown at serial No.5, and it was indicated that his date of birth was December 18, 1952 and that he had passed Std. IX examination. What was mentioned by the Employment Officer, so far as the petitioner is concerned, was that he was belonging to the Scheduled Caste. A copy of list forwarded by the Employment Officer to the Collector, Bharuch containing particulars about the candidates, is produced by the respondents at Annexure-A along with the reply affidavit. The Employment Officer, Bharuch, had thereafter informed the petitioner by communication dated August 11, 1982 that the petitioner was eligible for being appointed as a peon and that he should remain present in the Office of Collector, Bharuch, on August 16, 1982 at 1.00 P.M. along with the original certificates. Accordingly, the petitioner had remained present in the Office of Collector, Bharuch, where he was interviewed. The petitioner was selected as a Peon and was appointed as such by an order dated December 2, 1982, which is produced at Annexure-D to the petition. From the averments made in Paragraph 5 of the petition, it is evident that that someone had addressed a communication dated April 20, 1988, to the Collector, Bharuch, alleging that the petitioner had obtained appointment on the post of Peon on the basis that he was belonging to Scheduled Caste, but, in fact, he was not belonging to Scheduled Caste. In view of this, Office of the Collector by a communication dated April 20, 1988, had called upon the petitioner to produce certificate to establish that he was belonging to Scheduled Caste. The said communication is produced by the petitioner at Annexure-E to the petition. In reply to the said communication, the petitioner informed the Collector on May 4, 1988 that he had not produced any certificate before the Office of Employment Exchange indicating that he was belonging to Scheduled Caste and, therefore, it was not possible for him to produce the certificate demanded by communication dated April 20, 1988. However, by a letter dated September 9, 1988, the petitioner was informed that while forwarding the list of candidates, the Employment

Exchange Office had intimated the Office of the Collector that the petitioner was belonging to Scheduled Caste and that at the time of interview also he had produced a certificate showing that he was a person belonging to Scheduled Caste, on the basis of which selection was made and, therefore, the petitioner should produce evidence in support of his claim that he was belonging to Scheduled Caste. A copy of the said communication addressed by the Office of the Collector is produced by the petitioner at Annexure-G to the petition. In reply to the said communication, the petitioner informed the Collector that at the time of interview, he had not produced any certificate showing that he was belonging to Scheduled Caste and, therefore, it was not possible for him to produce the certificate as demanded in communication dated September 9, 1988. By another letter dated September 22, 1988, the petitioner was called upon to produce School Leaving Certificate as well as the certificate showing that he was belonging to Scheduled Caste and remain present in the Office of Collector on October 3, 1988. Though initially the petitioner was asked to offer his explanation on October 3, 1988 in the Office of the Collector, hearing of the matter was adjourned and ultimately, on October 25, 1988, according to the petitioner, only one question was asked to him by the Collector, namely, whether was he belonging to Scheduled Caste or not, and that the petitioner had replied that he was a member belonging to "Pakhali" community and was not a member of Scheduled Caste. Ultimately, by an order dated November 5, 1988, services of the petitioner were terminated. On November 8, 1988, the petitioner had addressed a letter to the Collector, Bharuch, requesting him to supply a copy of certificate indicating that the petitioner was belonging to Scheduled Caste, which the petitioner had allegedly produced at the time of interview, as well as copy of letter dated July 22, 1982, received from the office of Employment Exchange, but the documents demanded by the petitioner were not supplied to him. The case of the petitioner is that he had not produced before the Collector any certificate indicating that he was belonging to Scheduled Caste and, therefore, his services could not have been terminated on the ground that the petitioner had obtained appointment on the post of Peon by presenting false facts. What is mentioned by the petitioner is that in the Office of Employment Exchange also the petitioner had not produced any certificate showing that the petitioner was belonging to Scheduled Caste and, therefore, appointment could not have been cancelled on the basis that the petitioner had secured appointment by suppressing material facts. The case of the petitioner

is that the impugned order passed on the basis that the petitioner had secured appointment by presenting false fact that he was belonging to Scheduled Caste, should be set aside, more particularly when the petitioner had not produced any such certificate before the Collector and when documents, though demanded were not supplied to him. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

3. Ms. Anju Sharma, Collector, Bharuch, has filed reply affidavit controverting the averments made in the petition. What is claimed in the reply is that though the petitioner was overaged for the post of Peon, he was called for interview by relaxing the age criteria on the basis that he was belonging to Scheduled Caste, but as the petitioner was not belonging to Scheduled Caste, the petitioner is not entitled to the relief claimed in the petition.

4. I have heard the learned counsel for the parties and considered the documents forming part of the petition. The order, which is impugned in the petition, makes it more than clear that the petitioner was appointed on the post of Peon on the basis that he was a member of Scheduled Caste. It is relevant to notice that on August 16, 1982, the petitioner had completed the age of 29 years, 7 months & 29 days, but the age criteria was relaxed by the Collector on the basis that he was belonging to Scheduled Caste. Even if it is assumed for the sake of argument that the petitioner had not produced any document either before the Employment Exchange or before Collector indicating that he was belonging to Scheduled Caste, there is no manner of doubt that in the list, which was forwarded by the Office of Employment Exchange, Bharuch, to the Collector, Bharuch, it was mentioned that the petitioner was belonging to Scheduled Caste and the appointment of the petitioner as Peon was made on the basis of a mistaken belief that he was belonging to Scheduled Caste. It is not the case of the petitioner that he belongs to Scheduled Caste and the petitioner has made very clear in the petition that he belongs to "Pakhali" community, which is not recognized as one of the Scheduled Castes in the State. Though the petitioner has produced certificate dated March 21, 1980 indicating that he belongs to economically backward class, no Rule could be pointed out to the Court authorizing the competent authority to relax the age criteria on that basis. There is no manner of doubt that a mistake was committed by the Collector, Bharuch,in appointing the petitioner on the post of Peon on the

basis that he was belonging to Scheduled Caste and that such mistake has been corrected after affording more than sufficient opportunity of hearing to the petitioner. Every one is entitled to correct mistake which is committed bonafide and the Collector, Bharuch has rightly corrected the mistake committed by him. The action of the Collector, Bharuch in terminating services of the petitioner can never be regarded as contrary to the provisions of Article 14 or Article 16 of the Constitution, and that no direction can be given to the Collector to appoint the petitioner on the post of Peon.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. No order as to costs.

(J.M.Panchal,J.)

(patel)